MONTANA LEGISLATIVE HISTORY

Chapter 445 1993

Bill H 365 S _____ Original bill & history X C

H. Committee on NATURAL RESOURCES			S. Committee on NATURAL RESOURCES		
Hearing Date(s)	2/5	X C	Hearing Date(s)	3/22	X C
NO MINUTES RE:		C	& EXEC ACTION	3/23	X C
EXECUTIVE ACTION		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

1/27	FIRST READING		
1/27	FISCAL NOTE REQUESTED		
2/01	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/03	HEARING		
2/09	COMMITTEE REPORT—BILL PASSED		
2/11	2ND READING PASSED	65	34
2/11	MOTION FAILED TO TAKE FROM ENGROSSING AND REREFER TO APPROPRIATIONS	48	48
2/12	FISCAL NOTE REQUESTED		
2/12	FISCAL NOTE RECEIVED		
2/12	FISCAL NOTE PRINTED		
2/13	3RD READING PASSED	61	37
	TRANSMITTED TO SENATE		
2/16	FIRST READING		
2/16	REFERRED TO LOCAL GOVERNMENT		
3/16	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	46	3
3/19	3RD READING CONCURRED	45	2
	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
3/25	TRANSMITTED TO GOVERNOR		
3/29	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 217		
	EFFECTIVE DATE: 03/29/93		

HB 364 INTRODUCED BY MERCER, ET AL.

ALLOW ADDITIONAL OPTION FOR ASSESSMENT OF PROPERTY IN RURAL OR ROAD IMPROVEMENT DISTRICT

1/27	INTRODUCED		
1/27	REFERRED TO LOCAL GOVERNMENT		
1/27	FIRST READING		
2/11	HEARING		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	PLACED ON CONSENT CALENDAR		
2/19	3RD READING PASSED	96	0
	TRANSMITTED TO SENATE		
2/22	FIRST READING		
2/22	REFERRED TO LOCAL GOVERNMENT		
3/16	HEARING		
3/17	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	48	1
3/19	3RD READING CONCURRED	42	5
	RETURNED TO HOUSE		
3/24	SIGNED BY SPEAKER		
3/25	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/06	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 269		
	EFFECTIVE DATE: 10/01/93		

HB 365 INTRODUCED BY ROSE

CLOSE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER,

CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES

1/27	INTRODUCED		
1/27	REFERRED TO NATURAL RESOURCES		
1/27	FIRST READING		
1/27	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/05	HEARING		
2/12	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED AS AMENDED	68	31
2/16	3RD READING PASSED	66	34
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO NATURAL RESOURCES		
3/22	HEARING		
3/24	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/26	2ND READING CONCURRED	37	0
3/27	3RD READING CONCURRED	46	2
	RETURNED TO HOUSE WITH AMENDMENTS		
4/02	2ND READING AMENDMENTS CONCURRED	89	6
4/05	3RD READING AMENDMENTS CONCURRED	88	10
4/13	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
4/16	TRANSMITTED TO GOVERNOR		
4/21	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 445		
	EFFECTIVE DATE: 04/21/93		

HB 366 INTRODUCED BY ROSE

REPEAL SURCHARGE ON FIELD RODENTICIDES

BY REQUEST OF DEPARTMENT OF AGRICULTURE

1/27	INTRODUCED		
1/27	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/27	FIRST READING		
1/27	FISCAL NOTE REQUESTED		
2/02	FISCAL NOTE RECEIVED		
2/02	FISCAL NOTE PRINTED		
2/11	HEARING		
2/13	COMMITTEE REPORT—BILL PASSED		
2/15	2ND READING PASSED	94	5
2/17	3RD READING PASSED	94	5
	TRANSMITTED TO SENATE		
2/20	FIRST READING		
2/20	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
3/03	HEARING		
3/04	COMMITTEE REPORT—BILL CONCURRED		
3/06	2ND READING CONCURRED	39	5
3/08	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/24	SIGNED BY PRESIDENT		
4/02	TRANSMITTED TO GOVERNOR		
4/07	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 280		
	EFFECTIVE DATE: 04/07/93		

HOUSE BILL NO. 365

INTRODUCED BY ROSE

IN THE HOUSE

JANUARY 27, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 12, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 13, 1993	PRINTING REPORT.
	SECOND READING, DO PASS AS AMENDED.
FEBRUARY 15, 1993	ENGROSSING REPORT.
FEBRUARY 16, 1993	THIRD READING, PASSED. AYES, 66; NOES, 34.
FEBRUARY 17, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 20, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 24, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 26, 1993	SECOND READING, CONCURRED IN.
MARCH 27, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 2.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 1, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY.
APRIL 2, 1993	SECOND READING, AMENDMENTS CONCURRED IN.

APRIL 5, 1993

THIRD READING, AMENDMENTS CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

House BILL NO. 365

INTRODUCED BY ROSE

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; NULLIFYING CERTAIN WATER RESERVATIONS IN THE TETON RIVER BASIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1.** **Definitions.** Unless the context requires otherwise, in [sections 1 through 3], the following definitions apply:

(1) "Application" means an application for a beneficial water use permit pursuant to 85-2-302 or a water reservation pursuant to 85-2-316.

(2) "Ground water" means water that is beneath the land surface or beneath the bed of a stream, lake, reservoir, or other body of surface water and that is not immediately or directly connected to surface water.

(3) "Nonconsumptive use" means a beneficial use of water that does not cause a reduction in the source of supply and in which substantially all of the water returns without delay to the source of supply, causing little or no disruption in stream conditions.

(4) "Teton River basin" means the drainage area of the Teton River and its tributaries above the confluence of the Teton and Marias Rivers.

NEW SECTION. **Section 2.** **Basin closure -- exceptions.** (1) As provided in 85-2-319 and subject to the provisions of subsection (2), the department or the board may not process or grant an application for a permit to appropriate water or for a reservation to reserve water within the Teton River basin.

(2) The provisions of subsection (1) do not apply to:

(a) an application for a permit to appropriate ground water;

(b) an application for a permit to appropriate water for a nonconsumptive use;

(c) an application for a permit to appropriate water for domestic, municipal, or stock use;

(d) an application to store water during high spring flows; or

(e) emergency temporary appropriations as provided for in 85-2-113(3).

NEW SECTION. **Section 3.** **Certain reservations of no force and effect.** In accordance with the board's reservation order of June 30, 1992, the water reservations granted to the department of health and environmental sciences and the

department of fish, wildlife, and parks in the upper Missouri River basin under 85-2-316 are of no force and effect in the Teton River basin.

NEW SECTION. **Section 4.** Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [sections 1 through 3].

NEW SECTION. **Section 5.** Applicability. [This act] applies to all applications received by the department of natural resources and conservation after [the effective date of this act].

NEW SECTION. **Section 6.** Effective date. [This act] is effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15
In compliance with a written request, there is hereby submitted a Fiscal Note for HB0365, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION: This bill proposes a legislative closure for the Teton River Drainage Basin, No. 41-0, including its tributaries, mainly in Teton and Chouteau Counties and a small portion of southeastern Pondera County. The closure would prohibit the Department of Natural Resources and Conservation from receiving and processing any applications for consumptive, beneficial use of surface water except for domestic, municipal, stock or stored water during high spring flows or temporary emergency appropriations. It also nullifies those certain water reservations granted on June 30, 1992 by the Board of Natural Resources and Conservation to the Departments of Fish, Wildlife and Parks and Health and Environmental Sciences.

ASSUMPTIONS:

1. This proposed bill essentially closes the basin to any consumptive surface water permit applications.
2. The Department of Natural Resources and Conservation (DNRC) received applications for and issued 28 surface water permits in the Teton River Drainage Basin, No. 41-0, between July 1, 1973 and January 28, 1993, as follows: 7 stock, 17 irrigation, 1 domestic, 2 commercial, and 1 fish and wildlife. Of the 28 permits, 27 were issued between 1974 and 1984.
3. Only one surface water permit was issued during the 9 year period from 1984 to 1993. This single permit was issued for a commercial use at a rate of 90 GPM not to exceed 11.93 acre-feet of water per year.
4. The drastic reduction in applications for permits for surface water use in the Teton Basin during the past ten years is due to the fact that adequate flows of water do not exist on a reliable basis to justify any monetary investment to develop a water project. This reduction is also due to the Havre Water Resources Regional Office informing potential applicants of the water availability status in the basin which has convinced them that they would most likely not be successful in obtaining a consumptive water use permit from a surface water source.
5. Should HB0365 be enacted, the DNRC workload in the Teton River Basin would essentially remain the same.
6. The Departments of Fish, Wildlife and Parks and Health and Environmental Sciences would be unable to implement the instream flow program granted by the Board of Natural Resources final order establishing water reservations above Fort Peck Dam.

FISCAL IMPACT: None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES: The Board of Natural Resources final order also states that conservation districts reservations in the basin for which a development plan has not been submitted and approved shall have no force and effect. (See note below)

TECHNICAL NOTES: New Section 3 specifies that water reservations of the DHES and DFWP will have no force and effect upon closure of the basin. The section fails to include the Teton County and the Choteau County conservation districts in this exclusion.

David Lewis 2-2-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

John W. Rose 2-2-93
JOHN ROSE, PRIMARY SPONSOR DATE

Fiscal Note for HB0365, as introduced

HB 365

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **DICK KNOX, CHAIRMAN**, on February 5, 1993, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Rolph Tunby, Vice Chairman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Russ Fagg (R)
Rep. Gary Feland (R)
Rep. Mike Foster (R)
Rep. Bob Gilbert (R)
Rep. Hal Harper (D)
Rep. Scott Orr (R)
Rep. Bob Raney (D)
Rep. Dore Schwinden (D)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Howard Toole (D)
Rep. Doug Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Michael Kakuk, Environmental Quality Council
Roberta Opel, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: HB 365, HB 393, HB 417
Executive Action: HB 288, HB 393, HB 263-Discussion only

HEARING ON HB 365

Opening Statement by Sponsor:

REP. JOHN "SAM" ROSE, HD 11, Chouteau, noted he was carrying the bill for the closure of the Teton River Basin to further consumptive appropriations except for appropriations for ground

uses, and nullifying certain water reservations in the Teton River Basin.

Proponents' Testimony:

Leonard Blixrud, rancher, Choteau, Secretary-Treasurer of the Teton River Water Users' Association, Manager of the Farmers Coop Canal Company, and the substitute Water Commissioner for the Teton River, testified he utilized irrigation water from the Teton River. He supported the bill stating there wasn't enough water in the river to meet current appropriations. He added there were no objections to the bill from the Teton River Water Users' Association.

Charles Green, farmer, Choteau, spoke in support of the legislation, also elaborating that there was not enough water to meet current appropriations. He noted current rights needed to be protected.

REP. ROGER DEBRUYCKER, HD 13, Floweree, also supported current testimony concerning the lack of water to meet current appropriations. He added the river had stopped flowing 30 miles below Fort Benton on several occasions in the last two years.

Jim Richard, Montana Wildlife Federation, testified in support of the legislation and proposed an amendment deleting Section 3.

Bill Rachel, rancher, Choteau, addressed the committee and stated he and his neighbors have been chronically short of water on the Teton River. He stated there are 17 water rights holders in Choteau County and all are in agreement to close the entire basin.

Jo Brunner, Executive Director, Montana Water Resources Association, expressed the Association's support for the HB 365. The Association does not support the deletion of Section 3 of the bill.

Gary Fritz, Department of Natural Resources and Conservation, presented testimony in support of the legislation with the exception of Section 3. **EXHIBIT 1**

Opponents' Testimony:

Bob Lane, Department of Fish, Wildlife & Parks, testified in support of the concept of the legislation, but expressed the department's concerns with the procedure for considering basin closures and Section 3 of the bill which would eliminate the water reservations recently granted to DFWP and DHES. **EXHIBIT 2**

Bob Thompson, Attorney, Department of Health and Environmental Sciences, Water Quality Bureau, reiterated testimony on the

elimination of water reservations recently granted to DHES in Section 3. He stated the Department opposes the bill as currently written. **EXHIBIT 3**

Questions From Committee Members and Responses:

REP. BOB RANEY asked **REP. ROSE** to respond to the opponents testimony, especially testimony referring to Section 3 of the bill. **REP. ROSE** stated it would be possible to work something out on this section of the legislation.

REP. MIKE FOSTER directed the same question to **Ms. Brunner**, who responded that the section should remain in the legislation.

Closing by Sponsor:

REP. ROSE closed with two comments: he questioned the length of time and expertise put into the basin study and noted a 20 year study of stream flow in the Deep Creek Ranch area that had not been utilized. He added some valid testimony can be conditional. He noted he had questions on the reservations, but stated he would work with the departments.

HEARING ON HOUSE BILL 393

Opening Statement by Sponsor:

REP. DOUG WAGNER, HD 8, Flathead, introduced HB 393 and a proposed amendment for page 3, line 2. **EXHIBIT 4** The bill allows the Department of State Lands to more efficiently manage its brush disposal and Timber Stand Improvement (TSI) accounts and allows for more effective management of the state's resources. He noted the bill would eliminate needless paperwork and bookkeeping. He stated there is no cost to the state associated with this legislation, which is reflected in the accompanying fiscal note.

Proponents' Testimony:

Jeff Jahnke, Department of State Lands, Missoula, presented written testimony in support of the legislation delineating the benefits of the proposed change: combining the separate brush and TSI fees and associated accounts into a single forest development fee and account; and the addition of road acquisition and maintenance as a use of the forest development funds. **EXHIBIT 5**

Don Allen, Montana Wood Products Association, concurred with the intent of the legislation, but expressed concern with fee

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-5-93

NAME	PRESENT	ABSENT	EXCUSED
REP. DICK KNOX, CHAIRMAN	✓		
REP. ROLPH TUNBY, VICE CHAIRMAN	✓		
REP. JODY BIRD	✓		
REP. VIVIAN BROOKE	✓		
REP. RUSS FAGG	✓		
REP. GARY FELAND	✓		
REP. MIKE FOSTER	✓		
REP. BOB GILBERT	✓		
REP. HAL HARPER	✓		
REP. SCOTT ORR	✓		
REP. BOB RANEY	✓		
REP. DORE SCHWINDEN	✓		
REP. JAY STOVALL	✓		
REP. EMILY SWANSON	✓		
REP. HOWARD TOOLE	✓		
REP. DOUG WAGNER	✓		

HR:1993
wp.rollcall.man
CS-09

DATE 2-5-93
HB 365

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 365, FIRST READING

BEFORE THE HOUSE NATURAL RESOURCES COMMITTEE

FEBRUARY 5, 1993

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; NULLIFYING CERTAIN WATER RESERVATIONS IN THE TETON RIVER BASIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE."

The Department of Natural Resources and Conservation supports this proposed legislation which closes the Teton River Basin to applications to appropriate surface water supplies for consumptive uses. The Department does, however, suggest deleting the section of the bill nullifying reservations of water for instream flow purposes.

The department estimates that the Teton River Basin is capable of producing 250,000 feet of water in an average year. At the same time, 2,305 pre-1973 surface and ground water rights have been filed for the Teton River Basin. The amount of flow involved with these claims is ? 000 cubic feet per second or 2,300,000 acre-feet per year. Much of the claimed water diverted in the basin eventually returns to the system and is re-used. Yet the large discrepancy between the claimed rights and the available water supply cannot be ignored. In the face of this extensive level of claimed water use it is not surprising that the department has issued only 28 permits for surface water appropriation in the basin since the passage of the Water Use Act in 1973. Only one permit has been issued in the past nine years. Based on this past record and findings of recent water availability studies of the department, it is unlikely that any applicants for future surface water appropriations can demonstrate they will not adversely affect the existing water right holders.

The Department is concerned with the need and appropriateness of Section 3 of this legislation which refers to the June 30, 1992 Order of the Board of Natural Resources and Conservation establishing water reservations in the basin. The proposed legislation states that Section 3 is in accordance with the conditions of the Board's Order. However, provisions of Section 3 are not in accordance with the Board Order in that some of the granted and conditioned reservations are included and others are not specifically mentioned. Furthermore, Section 3 goes beyond the Board's Order for defining when the reservations are of no force and effect. Interpreting this provision would be confusing

with the discrepancies which exist between this Section and the Board's Order. The conditions in the Board's Order concerning basin closure are clear and provide consistent management direction for the entire Upper Missouri River Basin.

In summary, and with the exception of Section 3, the department supports House Bill 365. Coupled with the comprehensive management program inherent in Board Order establishing water reservations in the basin, it provides assurances that the best interests of all water users in the basin can be protected.

EXHIBIT 2
DATE 2-5-93
HB 365

HB 365
February 5, 1993

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks before the House Natural Resources Committee

The Department of Fish, Wildlife & Parks believes that basin closures, in the proper circumstances and under the appropriate procedures, are a desirable, effective and even necessary water management tool. The department understands that the Teton River Basin is a prime candidate for consideration of a basin closure.

The Teton River and its tributaries also contain significant fisheries, including some tributaries which may contain pure strains of Westslope cutthroat trout, a "species of special concern" in Montana.

We recognize potentially significant problems of water shortages and availability within the basin. However, for two reasons the department cannot support the bill as presently written:

There is a better procedure available for considering basin closures. This is a process established by the legislature. The Department of Natural Resources and Conservation has authority to close basins to new water uses when there is no unappropriated water available or present water right holders will be adversely affected.

This process has the advantages of greater time and public involvement to consider all the facts before a decision is made. There would be a public hearing, with full opportunity for the involvement of water users and other affected parties, and a public agency with the expertise to consider and study all the facts. This procedure was tailored by the legislature to deal with the complexities of water management so that any closure could be crafted to the specific and unique character of each basin. The department recommends that the legislature, in its wisdom, defer to this process.

The department's other concern is with the unfundamental fairness of Section 3 of the bill that would completely take away the water reservations recently granted to this department and the Department of Health and Environmental Sciences. This proposal flies in the face of the June 30, 1992, decision of the Board of Natural Resources and Conservation. The Board determined that junior instream flow reservations were in the public interest. The Board's determination was made after a three year process that followed the submittal of reservation applications. This included an EIS, an extensive record based on written testimony of experts and the public, and an administrative hearing lasting over four weeks, as well as exhaustive legal and policy arguments. The Board concluded that instream flow reservations were needed and in the public interest. The department spent the better part of 10 years in this process.

Now this bill would negate that whole effort for instream flows. This is not fair and it would frustrate the public's reliance and faith in a valid public process initiated by the legislature. During the administrative hearing, holders of existing rights were concerned that their existing rights be protected, and they were. The department holds instream flow reservations on behalf of the public and asks that the public's rights be given this same recognition and protection. The department is entitled to play a role in future water use and management issues in the basin that would affect the fisheries resource. However, instream rights will be treated in a way that no one would consider treating any other vested water rights. They have no protection under this bill.

It is true that there is a condition in the Board's order that partly nullifies instream reservations upon a closure, but it is fundamentally different. The condition states that instream reservations have no force and effect "for any class of uses for which permit applications are precluded." Under the Board's condition, the instream reservations would be nullified only for all surface water uses and ground water uses directly connected to surface water. Under the bill, instream values would be denied any protection, even against the exceptions to the closure. Instream reservations would be protected against the exceptions under the Board's order.

The department understood that the Board's condition may be

difficult and, in fact, may prove to be unworkable. The department resolved to work with the Board's order granting reservations with the idea that, if the condition proved to be unwise, the same Board would be in the best position to resolve the difficulties. The department choose not to appeal any of the conditions. Other parties opposing the instream flow reservations have appealed the Board's order in other basins.

The no force and effect condition is now proving in HB 365 that it has severe drawbacks. It prevents all of the parties with a legitimate interest from being free to consider basin closures on the merits of the closures themselves. If the Board's condition was removed, then the department could support the closure. An amendment for this purpose is attached.

Without the proposed amendment, the department opposes the bill but not the concept of a closure for the Teton River Basin.

EXHIBIT 2
DATE 2-5-93
HB 365

PROPOSED AMENDMENT TO HB 365
FIRST (WHITE) COPY

1. Page 2, line 22 through page 3, line 3.
Strike: section 3 in its entirety
Insert" "NEW SECTION. **Section 3.** Validity of Reservations. The closure in [section 2] shall not render any instream reservation granted by the Board of Natural Resources and Conservation in its June 30, 1992, order of no force and effect, notwithstanding any condition to the contrary in that order."

EXHIBIT 5
DATE 2-5-93
HB 365

Testimony on House Bill 365

Presented by

Montana Department of Health
and Environmental Sciences

Because HB 365 would dramatically alter the effect of the Final Order of the Board of Natural Resources and Conservation in the Teton River Basin, the Department of Health and Environmental Sciences recommends a "DO NOT PASS" on House Bill 365. This recommendation is made for the following reasons:

1. The Board of Natural Resources and Conservation (BNRC) conducted an extensive administrative contested case to implement the water reservation laws for the upper Missouri River basin. The BNRC issued findings and reservations implementing these statutes. Change now would preempt this exercise of public policy established through the water reservation laws.

2. HB 365 limits the Department's water reservation in the Teton River Basin in a manner that is inconsistent with the BNRC's Order. The BNRC expressly provided that reservations are only of no force and effect during periods of basin closure. If a basin is opened, the BNRC reinstates the reservations. With this bill, the Legislature would close the Teton basin now and eliminate DHES' reservation. If the basin was ever reopened, the DHES would have no reservation.

3. Section 3 of the bill terminates the reservations of the DHES and the Department of Fish, Wildlife, and Parks but allows other reservations in the Teton Basin to remain in effect. This section is also inconsistent with the BNRC's Order and raises questions of equity.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Natural Resources COMMITTEE BILL NO. 365, 393, 417

DATE 2/5/93 SPONSOR(S) REPS ROSE (365), WAGNER (393), TUNBY (417)

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
WILLIAM E. REICHELT	SELF ~~HB 365~~	X	
Jo Brunner	MCWRA 365	X	
Charles Danneither	Self HB 365	X	
Kirk Reichelt	HB 365	X	
Kevin Rubens	HB 365	X	
Leonard Blixrud	HB 365	X	
Charles Crane	HB 365	X	
John Kelly	HB 365	X	
Bob Lane	FWP HB 365		X
John Geach	DHES UST Program	X	
Ted Dorey	Tetan Water Users Assn.	365 X	
CASSANDRA NOBLE	~~HB~~ DHES re HB417	X	
Vicki A Baker	HB 365	X	
Clark R. Crawford	HB 365	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 22, 1993, at 3:15 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SJR 29, HB 365, HB 395, HB 488, HB 503
Executive Action: None.

HEARING ON SJR 29

Opening Statement by Sponsor:

Senator Cecil Weeding, Senate District 14, stated SJR 29 would request the Environmental Quality Council (EQC) to conduct a study of the nondegradation provisions of the Montana water quality laws and their implementation. He said the EQC would then be required to report its findings and recommend legislation to members of the 54th Legislative Session. Senator Weeding noted SJR 29 was drafted in response to concerns raised by a variety of bills introduced this session pertaining to water

Questions From Committee Members and Responses:

Senator McClernan asked Mr. Tawney if land and air were included in the Montana Constitution's definition of the "environmental life support system". Mr. Tawney replied yes and added that the Constitutional Committee purposely avoided a specific definition so no resource would be exempted.

Senator Grosfield asked Mr. Tawney if it was unconstitutional to degrade Montana's air, land and water. Mr. Tawney replied yes.

Senator Grosfield asked Mr. Tawney how Montana could "go forward with a strict interpretation of the Constitution". Mr. Tawney replied that only a vote of the people could change Montana's Constitution. He said a number of industries have entered Montana with the notion of "cutting corners" with respect to Montana's environmental provisions. He said it should be up to the voters to decide if these provisions should be changed.

Senator Swysgood asked Mr. Tawney if, under his strict interpretation of the Montana Constitution, any level of nondegradation would be permitted. Mr. Tawney replied that his interpretation of the Constitution would allow for degradation as long as it was corrected by the responsible entity.

Closing by Sponsor:

Senator Weeding stated a number of groups who usually take opposite sides on most issues were in agreement that SJR 29 is necessary. He added that EQC study is needed since some form of SB 401 will probably be passed by the Legislature.

HEARING ON HB 365

Opening Statement by Sponsor:

Representative John "Sam" Rose, House District 11, stated HB 365 pertained to closure of the Teton River Basin. He said the Teton River is a small and young stream. He noted the Teton River has the potential to "break out" into McDonald stream which would cause major property and environmental damage. Representative Rose noted that in response to this potential hazard, concerned area residents came together to assess the situation. He said it would cost approximately $60,000 per mile to stabilize the Teton River. He noted the Environmental Protection Agency (EPA) may contribute a maximum of $500,000 to the restoration project. Representative Rose stated he amended Section 3 back into the bill on the House floor. He said he feared that Teton River would "lose water on the upper end" if DHES flushed the stream to remove excess minerals. He said the Teton River Basin should be closed because it is "over appropriated". Representative Rose

noted that in one summer, 125 requests were made for water from the Teton River Basin which already irrigates 35,000 acres. He concluded his irrigation district should be able to handle this problem on its own.

Proponents' Testimony:

Representative Roger DeBruycker, House District 13, stated the Teton River has been permitted so frequently that "the flood of 1964 would not even be enough to satisfy the water supply". He asked the Committee to support HB 365.

Mr. Jay Rice, Teton River Water Users Association (TRWUA) President, stated the Teton River provides a number of economic and recreational benefits. He said the area is becoming a "haven" for hunters and fishers. He said closing the Teton River Basin would provide protection for this area as originally sought by the Department of Fish, Wildlife and Parks (FWP) when it issued a reservation to prohibit any new uses for this body of water. Mr. Rice concluded "retaining the FWP reservation would further erode the present irrigation base".

Mr. Clay Crawford, Teton River Study Committee Chair, stated a fragile coalition has been formed between landowners and FWP to address this issue on a local level. He urged the Committee to retain Section 3 of HB 365.

Mr. Bill Richard, rancher, stated the Teton river has been dry for eight of the last sixteen years. He noted that since 1973, the Department of Natural Resources and Conservation (DNRC) has issued 28 new permits and three water reservations. He said the majority of water right holders in his area agree that the only way to avoid worsening the problem is to close the entire Teton River Basin. Mr. Richard said the water quality of Freezeout Lake has been affected by overuse and urged the Committee to support HB 365.

Ms. Jo Brunner, Montana Water Resources Association (MWRA), stated HB 365 would protect existing users. She said water users want to protect streams and added they have a right to protect their water use interests.

Senator Bob Hockett, Senate District 7, excused himself from the Committee for the purpose of testifying in favor of HB 365. He said the Teton River stream is "dewatered" by the time it reaches the point of entry into the Marias River.

Mr. Gary Fritz, DNRC, spoke from prepared testimony in support of HB 365 (Exhibit #4).

Mr. Leonard Blixrud, TRWUA, stated the water diverted flows north east and forms an aquifer in the Farmington area. He said prior to irrigation, this area would be a desert unable to sustain

anything.

Mr. Bob Lane, FWP Legal Counsel, spoke from prepared testimony in support of HB 365 (Exhibit #5). He said Section 3 should be removed from the bill.

Mr. Stan Bradshaw, Montana Trout Unlimited (MTU), stated the support of his organization and Montana Wildlife Federation for HB 365. He said HB 365 "makes sense" because not enough water is in the Teton River. He noted DNRC's reservations would be suspended if HB 365 were passed. Mr. Bradshaw concluded Section 3 of the bill was unnecessary and urged the Committee to remove the section.

Opponents' Testimony:

None.

Informational Testimony:

None.

Questions From Committee Members and Responses:

Senator Keating asked Mr. Richard if, at one time, area ranchers used the Teton River as a primary water source. Mr. Richard replied yes and added many ranchers still do. He said the water must be treated before it can be used as drinking water.

Senator Weeding asked Representative Rose if Freezeout Lake drained the Fairfield Bench. Representative Rose replied Senator Weeding was correct.

Closing by Sponsor:

Representative Rose closed his remarks on HB 365.

HEARING ON HB 395

Opening Statement by Sponsor:

Representative Mike Foster, House District 32, stated HB 395 would close the upper Missouri River Basin to further issuance of any permits until adjudication is completed. He said the upper Missouri River Basin includes the Missouri River and all its tributaries above the Morony Dam near Great Falls. According to Representative Foster, HB 395 would recognize that the Missouri River Basin is over appropriated.

ROLL CALL

SENATE COMMITTEE Natural Resources DATE 3/22

NAME	PRESENT	ABSENT	EXCUSED
Sen. Bianchi	✓		
Sen. Hockett	✓		
Sen. Bartlett	✓		
Sen. Doherty	✓		
Sen. Grosfield	✓		
Sen. Keating	✓		
Sen. Kennedy	✓		
Sen. Swift	✓		
Sen. Suvsgood	✓		
Sen. McClernan	✓		
Sen. Treit	✓		
Sen. Weeding	✓		
Sen. Weldon	✓		

FC8

Attach to each day's minutes

TESTIMONY OF THE
DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION
ON HOUSE BILL 365, FIRST READING

BEFORE THE SENATE NATURAL RESOURCES COMMITTEE

MARCH 22, 1993

A BILL FOR AN ACT ENTITLED: "AN ACT CLOSING THE TETON RIVER BASIN TO FURTHER CONSUMPTIVE APPROPRIATIONS, EXCEPT APPROPRIATIONS FOR GROUND WATER, CERTAIN STORAGE PROJECTS, AND DOMESTIC, MUNICIPAL, AND STOCK USES; NULLIFYING CERTAIN WATER RESERVATIONS IN THE TETON RIVER BASIN; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATE."

The Department of Natural Resources and Conservation supports this proposed legislation which closes the Teton River Basin to applications to appropriate surface water supplies for consumptive uses.

The department estimates that the Teton River Basin is capable of producing 250,000 feet of water in an average year. At the same time, 2,305 pre-1973 surface and ground water rights have been filed for the Teton River Basin. The amount of flow involved with these claims is 78,000 cubic feet per second or 2,300,000 acre-feet per year. Much of the claimed water diverted in the basin eventually returns to the system and is re-used. Yet the large discrepancy between the claimed rights and the available water supply cannot be ignored. In the face of this extensive level of claimed water use it is not surprising that the department has issued only 28 permits for surface water appropriation in the basin since the passage of the Water Use Act in 1973. Only one permit has been issued in the past nine years. Based on this past record and findings of recent water availability studies of the department, it is unlikely that any applicants for future surface water appropriations can demonstrate they will not adversely affect the existing water right holders.

In summary, the department supports House Bill 365. Coupled with the comprehensive management program inherent in Board Order establishing water reservations in the basin, it provides assurances that the best interests of all water users in the basin can be protected.

SENATE NATURAL RESOURCES
EXHIBIT NO. 4
DATE 3/22/93
BILL NO. HB 365

SENATE NATURAL RESOURCES
EXHIBIT NO. 5
DATE 3/22/93
BILL NO. HB 365

HB 365
March 22, 1993

Testimony presented by Bob Lane, Dept. of Fish, Wildlife & Parks before the Senate Natural Resources Committee

The department supports the concept of a basin closure in the Teton River basin.

Our concern is with the impact of closures in the upper Missouri River Basin on the instream water reservations granted by the Board of Natural Resources and Conservation on June 30, 1992.

These reservations were granted for fisheries, recreation and water quality with a priority date of July 1, 1985. Because of a condition put on the reservations by the Board, the reservations for instream purposes and for irrigation are partially nullified.

In testimony on two Senate bills already heard by this committee and in testimony on two closure bills before a House committee, I have explained the department's concern with the impacts of the Board's condition and argued that it was now clear the Board's condition was not good public policy. However, both the House and Senate have decided so far to defer to the Board on this issue. The department can accept this decision. It preserves the status quo of the reservations as granted by the Board.

However, this bill has an additional section. The department is

troubled by Section 3 that codifies the Board's condition. The department prefers that Section 3 be eliminated so that decisons on reservations will be left to the Board.

DATE 3/22/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SJR 29, HB 365, HB 395, HB 488, HB 503

Name	Representing	Bill No.	Check One: Support	Check One: Oppose
Bill Rechelf		HB365	✓	
Alexis Rechelf		HB365	✓	
Diane Walker		HB 365	✓	
Richard View		HB365	✓	
Jeff Jahnke	DSL	HB503	✓	
Jeanne Charter	NPRC Bull Mt Landowners	SJ 29	✓	
Kim Wilson	Clark Fork Coal	SJ29	✓	
Teresa Erickson	NPRC	SJR 29	✓	
DAVID PRICE	Bear Ck Council	SJR 29	✓	
Pat Clark	Cottonwood Resource Council	SJR 29	✓	
ROBIN CUNNINGHAM	FOAM	SJR29	✓	
Eugene Johnson	Sierra Club	SJR29	✓	
Stan Bradshaw	M.T.T.U.	SJR29 HB365 HB395	✓ Amend ✓	
Stan Hanly	CRC/NPRC	SJR 29	✓	
Andrea Strader	NPRC	SJR29	✓	
Linda Larson	NPRC	SJR 29	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

DATE 3/22/93

SENATE COMMITTEE ON Natural Resources

BILLS BEING HEARD TODAY: SJR 29, HB 365, HB 395, HB 488, HB 503

Name	Representing	Bill No.	Check One: Support	Oppose
[illegible]	[illegible]	SJR 29	X	
CESAR HERNANDEZ	CABINET RESOURCE GRP	SJR 29	X	
Mona Jamison	Mikelson Land Co.	SJR 29	X	
Jim Jensen	MEIC	SJR 29	✓	
Richard Parks	NPRC	SJR 29	✓	
Peggy Trent	WETA	SJR 29	✓	
Janet Ellis	MT Audubon Leg Fund	SJR 29 HB 503	✓ ✓	
Jim Richard	MT. Wildlife Fed	SJR 29 HB 365 HB 503	✓ ✓ ✓	
Stan Bradshaw	MT. T.U.	HB 503	✓	
Leo Berry	Entech	SJ 29	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

F10

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By Chair Bianchi, on March 23, 1993, at 5:15 p.m.

ROLL CALL

Members Present:

Sen. Don Bianchi, Chair (D)
Sen. Bob Hockett, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Lorents Grosfield (R)
Sen. Tom Keating (R)
Sen. Ed Kennedy (D)
Sen. Bernie Swift (R)
Sen. Chuck Swysgood (R)
Sen. Henry McClernan (D)
Sen. Larry Tveit (R)
Sen. Cecil Weeding (D)
Sen. Jeff Weldon (D)

Members Excused: None.

Members Absent: None.

Staff Present: Paul Sihler, Environmental Quality Council
Leanne Kurtz, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	None.
Executive Action:	HB 488, HB 503, HB 30, HB 365, HB 395, HB 64, HB 102

EXECUTIVE ACTION ON HB 488

Motion/Vote:

Senator Swift moved HB 488 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Swift will carry HB 488 on the Senate floor.

governing body may regulate development of lakeshores at less than 20 feet. Mr. Sihler replied no and added the lakeshore statute requires local governing bodies to adopt regulations up to 20 feet for natural lakeshores. He said he did not think that authority was discretionary.

Senator Doherty asked Mr. Sihler if local governing bodies would be able to adopt regulations up to 50 feet if HB 30 were passed. Mr. Sihler replied Senator Doherty was correct.

Senator Tveit stated it appeared that HB 30 did not address whether the regulations would apply to renovation of existing dwellings. Senator Bianchi replied that under Senator Kennedy's amendment, remodeling and expansion of existing homes would be exempted from HB 30.

Senator McClernan asked for a definition "lake" as it pertained to HB 30. He asked if Kerr Dam would be subject to the provisions of HB 30. Senator Doherty replied Flathead Lake existed before Kerr Dam was built; the dam simply raised the water level on the lake.

Vote:

Senator Keating's motion to TABLE HB 30 CARRIED eight votes to five by roll call vote.

EXECUTIVE ACTION ON HB 365

Motion:

Senator Doherty moved to amend HB 365 (Exhibit #1).

Discussion:

Senator Doherty stated the amendment would remove Section 3 from HB 365.

Senator Swysgood stated the language in HB 365 merely codified the Board of Natural Resource's (Board) decision.

Senator Grosfield stated the amendments would do more harm than good. He said Section 3 states "water reservations have no force and effect for any class of uses precluded under Section 2". He added Section 2 states "the provisions do not apply to ground water, non-consumptive, domestic, municipal or stock water or water used in emergencies". Senator Grosfield stated Section 3 would not affect in-stream water reservations because they are non-consumptive. He concluded Section 3 would only affect diversionary reservations.

Senator Bianchi asked Mr. Sihler if Senator Grosfield was correct. Mr. Sihler replied he was unsure but added Senator Grosfield's comments "seemed like a compelling argument".

Senator Keating stated in-stream flow would be protected by retaining the language in Section 3.

Senator Bianchi asked Ms. Holly Franz from Montana Power Company to comment. Ms. Franz replied she interpreted the language to state that any one with a reservation could object to any use exempted. She said she agreed with Senator Swysgood's comments.

Senator McClernan asked Ms. Franz if the Committee should retain Section 3 to protect in-stream flow. Ms. Franz suggested the Committee delete Section 3.

Senator Weeding asked Ms. Franz if the Board would have to go to the Legislature to change an order if Section 3 were retained. She replied Senator Weeding was correct. She concluded "the Teton River Basin condition was statutory but the condition of the rest of the basin could be changed by the Board".

Senator Bianchi asked Ms. Franz if the Board was required to review water reservations every ten years. Ms. Franz replied the Board would not have the authority to change the statute.

Vote:

Senator Doherty's motion to amend CARRIED eight votes to five by roll call vote.

Motion/Vote:

Senator Keating moved HB 365 BE CONCURRED IN. MOTION CARRIED UNANIMOUSLY. Senator Hockett will carry HB 365 on the Senate floor.

EXECUTIVE ACTION ON HB 395

Motion:

Senator Kennedy moved HB 395 BE CONCURRED IN.

Motion:

Senator Swysgood made a substitute motion to amend HB 395 to exempt domestic and stock water use from the bill.

ROLL CALL

SENATE COMMITTEE NATURAL RESOURCES DATE 3-23-93

NAME	PRESENT	ABSENT	EXCUSED
CHAIR BIANCHI	✓		
VICE-CHAIR HOCKETT	✓		
SEN. BARTLETT	✓		
SEN. DOHERTY	✓		
SEN. GROSFIELD	✓		
SEN. KEATING	✓		
SEN. KENNEDY	✓		
SEN. McCLERNAN	✓		
SEN. SWIFT	✓		
SEN. SNYDGOOD	✓		
SEN. TVEIT	✓		
SEN. WEEDING	✓		
SEN. WELDON	✓		

FC8

Attach to each day's minutes

SENATE STANDING COMMITTEE REPORT

March 24, 1993

MR. PRESIDENT:
We, your committee on Natural Resources having had under consideration House Bill No. 365 (first reading copy -- blue), respectfully report that House Bill No. 365 be amended as follows and as so amended be concurred in.

Signed: Don Bianchi
Senator Don Bianchi, Chair

That such amendments read:

1. Title, lines 8 and 9.
Strike: "NULLIFYING" on line 8 through ";" on line 9

2. Page 3, lines 6 through 12.
Strike: section 3 in its entirety
Renumber: subsequent sections

3. Page 3, lines 14 and 17.
Strike: "THROUGH 3"
Insert: "and 2"

-END-

Amd. Coord. Hockett

ROLL CALL VOTE

SENATE COMMITTEE NATURAL RESOURCES BILL NO. HB 365

DATE 3-23-93 TIME _____ A.M. P.M.

NAME	YES	NO
CHAIR BIANCHI	X	
VICE-CHAIR HOCKETT	X	
SEN. BARTLETT	X	
SEN. DOHERTY	X	
SEN. GROSFIELD		X
SEN. KEATING		X
SEN. KENNEDY	X	
SEN. McCLERNAN	X	
SEN. SWIFT		X
SEN. SWYSGOOD		X
SEN. TVEIT		X
SEN. WEEDING	X	
SEN. WELDON	X	

JEANNE KURTZ
SECRETARY

SENATOR BIANCHI
CHAIR

MOTION: SENATOR DOHERTY MOVED HB 365 BE AMENDED. MOTION CARRIED EIGHT VOTES TO FIVE.

SENATE NATURAL RESOURCES
EXHIBIT NO. 1
DATE 3-23-93
BILL NO. HB 365

Amendments to House Bill No. 365
Third Reading Copy

Requested by Senator Doherty
For the Committee on Natural Resources

Prepared by Paul Sihler
March 23, 1993

1. Title, lines 8 and 9.
Strike: "NULLIFYING" on line 8 through ";" on line 9

2. Page 3, lines 6 through 12.
Strike: section 3 in its entirety
Renumber: subsequent sections

3. Page 3, lines 14 and 17.
Strike: "THROUGH 3"
Insert: "and 2"